

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0533

**Corporate Income Tax
For Tax Periods 1992—1994**

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ISSUES

I. Income Tax – Foreign Source Dividends

Authority: Ind. Code § 6-3-2-12

Taxpayer protests the calculus used to compute its foreign source dividend deduction.

STATEMENT OF FACTS

Taxpayer (holding company and subsidiaries) is engaged in multinational operations. Historically, taxpayer has reported its Indiana income (both gross and adjusted gross) on a unitary basis. The Department visited taxpayer and conducted an audit for tax periods ending in 1992 and 1993. This audit resulted in additional proposed assessments of Indiana adjusted gross income tax. Taxpayer now protests these assessments.

I. Income Tax – Foreign Source Dividends

DISCUSSION

In calculating its Indiana tax liabilities, taxpayer, pursuant to IC 6-3-2-12, deducted foreign source dividend income from its Indiana adjusted gross income. Audit, however, disagreed with taxpayer's calculus. Re-calculation by Audit resulted in an increase in taxpayer's Indiana adjusted gross income and tax. Proposed assessments of Indiana adjusted gross income tax followed.

Taxpayer, in response, directs the Department's attention to the language of IC 6-3-2-12(b), which states:

A corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is entitled to a deduction from that adjusted gross income. The amount of the deduction equals the product of:

- (1) the amount of the foreign source dividend included in the corporation's adjusted gross income for the taxable year; multiplied by
- (2) the percentage prescribed in subsection (c), (d), or (e), as the case may be.

The aforementioned subsections (c), (d), and (e) allow corporate taxpayers to receive a one hundred percent (100%) deduction for foreign source dividends received from corporations in which a taxpayer has an eighty percent (80%) or larger ownership interest; an eighty-five percent (85%) deduction for dividends received from corporations in which a taxpayer has a fifty to seventy-nine percent (50%-79%) ownership interest; and a fifty percent (50%) deduction for dividends received from corporations in which a taxpayer has less than a fifty percent (50%) ownership interest. IC 6-3-2-12(c)-(e).

This statutory language is cogent and clear. IC 6-3-2-12 authorizes pro rata deductions (based on the percentage ownership of the payor by the payee) of certain foreign source dividend income. In this instance, taxpayer has followed the statutory prescriptions in calculating its foreign source dividend deductions.

FINDING

Taxpayer's protest is sustained.